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Supreme Court of the United States

OCTOBER TERM, 1956

No. 744

FRIENDLY SOCIETY OF ENGRAVERS AND SKETCHMAKERS, PETITIONER,

versus

CALICO ENGRAVING COMPANY, RESPONDENT

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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It is respectfully submitted that this Honorable Court should not entertain the petition herein for the following reasons:

1. The Court of Appeals properly held that the first cause of action did not state a claim upon which relief could be granted under the laws of the State of South Carolina and that if any cause of action was stated it was one arising under and by virtue of the Labor Management Relations Act of 1947, and thus within the exclusive jurisdiction of the National Labor Relations Board.

QUESTION PRESENTED

The respondent cannot agree with petitioner's statement of the question presented. In petitioner's view the sole question presented is whether or not the Labor Management Relations Act of 1947 precludes the maintenance of a common law tort action by a labor union against an employer in the United States District Court. Respondent believes that two questions are presented, namely: (1) Is a cause of action for common law tort stated?; (2) Is a cause of action for violation of the Labor Management Relations Act of 1947 within the exclusive jurisdiction of the National Labor Relations Board?

CONSTITUTIONAL PROVISION INVOLVED

U. S. Constitution, Amendment VII.

The respondent does not believe that this constitutional provision concerning the right of trial by jury is involved because if no cause of action is stated, there is nothing to be heard by the jury. Furthermore, offenses under the Labor Management Relations Act are declared by that Act to be triable by the National Labor Relations Board.

STATEMENT OF THE CASE

The respondent agrees with the statement of the case by petitioner. It invites attention to the fact that the District Court held that no cause of action was stated upon which relief could be granted, as to either cause of action set forth in the complaint. Petitioner does not appeal from the decision of the Court below as to its second cause of action. The alleged first cause of action as set forth in petitioner's complaint, the basis for petitioner's writ of certiorari, is set forth in the appendix hereto.

ARGUMENT

The petitioner divides its argument for the granting of the Writ into three parts. We shall answer these arguments *seriatim*.

Petitioner's cause of action is purportedly for an alleged common law tort under the laws of the State of South Carolina. Under the common law of South Carolina it is not a tort for an employer to be concerned with the activities of its employees, nor is it a common law wrong to even go so far as to make non-union membership a condition of employment. It is, therefore, obviously no common law wrong to persuade an employee not to be a member of a union, or to discharge for any cause whatsoever. Am. Jur., Vol. 31, pages 837, 838 and 1103. The common law rule has been recognized by the Supreme Court of the State of South Carolina in *Parker v. Southeastern Haulers, Inc.*, 210 S. C. 18, 41 S. E. (2d) 387, wherein the Court makes the following statement:

> "This decision does not affect the established law of this state, which is the common law, that ordinarily an employee under contract for employment of indefinite duration may quit his job at will and, as a correlative right of the employer, the latter may discharge the employee without cause (and without duty to furnish him any explanation, recommendation or what not.) *Shealy v. Fowler*, 182 S. C. 81, 188 S. E. 499. See also 39 C. J., 71, 90, 31, Am. Jur. 1103; and 35 *Id.* 469."

An employer has a definite interest in the relationship between a union and its employees and under common law may seek to influence that relationship in a lawful manner. The Court below recognized this right in the following words:

> "We agree with the court below that neither cause of action states a claim upon which plaintiff can recover. As to the first cause of action, plaintiff's contention is that it is entitled to recover for malicious in-

terference with contract, under the doctrine of such cases as *Lumley v. Gye*, 2 El. and BL, 216, 118 Eng. Rep. 749; *Chitwood v. McMillan*, 189 S. C. 262, 1 S. E. (2d) 162; and *Keels v. Powell*, 207 S. C. 97, 34 S. E. (2d) 482. We do not think, however, that the action of an employer in seeking to eliminate union membership on the part of his employees falls within the ambit of these cases. Certainly there was no action at common law for such anti-union activity on the part of the employer, who might require of his employees as a condition of employment that they not be members of a labor union. See *Hitchman Coal & Coke Co. v. Mitchell*, 245 U. S. 229; *Coppage v. Kansas*, 236 U. S. 1; *Adair v. United States*, 208 U. S. 161."

Petitioner attempts to bring the instant case within the doctrine of *United Construction Workers v. Laburnum Construction Corporation*, 347 U. S. 656. In that case members of a union, in no way connected with the employer or his employees, assaulted employees of the employing company. The assault was clearly a common law tort consisting of physical violence and threats committed by strangers to the contracting parties. It is, therefore, inapposite. There is no common law tort in the instant case. Here the employer is simply charged with an alleged unfair labor practice, governed solely by statute. As the Court below, in referring to the *Laburnum case, supra*, said:

"That case dealt with the right to recover damages on account of a common law tort actionable in the absence of statute, not a mere unfair labor practice with respect to which no action at common law existed. Of course tortious action such as assault and battery does not cease to be actionable because it may constitute an unfair labor practice; but it does not follow that an unfair labor practice is actionable at law because forbidden by statute. As pointed out above, where the statute which forbids it provides at the same time a remedy for its redress without providing a right of

action in the courts, the remedy so provided is exclusive."

Respondent further argues that the decision of the Court below is in conflict with *International Union, U. A. W. v. Russell*, 88 So. (2d) 175, certiorari granted November 19, 1956. With this we cannot agree. That case is inapplicable as the facts there are substantially different from the one before the Court.

In that case there was a strike and resultant picketing by the union against the employer of respondent Russell. Russell attempted to cross the picket line in going to work and as he drove his car toward the plant entrance a large number of pickets blocked the street leading to the entrance. The pickets surrounded Russell's car and shouted threats to turn the car over. Other threats were shouted by the pickets. Russell was thereby prevented from going to work and pursuing his lawful and gainful occupation. The Supreme Court of Alabama held it had jurisdiction under the state's police power for malicious acts of violence and threats of personal injury. The case also involved serious questions of evidence. The instant case involves no such threats or actual violence or threats of personal injury and none is alleged, nor, as shown, does it involve any other common law tort.

Inasmuch as no common law tort existed upon which relief could be granted and the alleged acts of respondent being, if anything, merely unfair labor practices, the provisions of the Labor Management Relations Act, 1947, are controlling. Since that Act Proscribes and makes unlawful the commission of labor practices not otherwise illegal, the remedy therein provided is also controlling. Thus, the National Labor Relations Board, created by the Act, has exclusive original jurisdiction to determine issues arising out of alleged unfair labor practices and provide remedy there-

for. *Anson v. Hiram Walker*, 222 F. (2d) 100 (C. C. A. 7), Cert. Denied 350 U. S. 840; *U. E. Radio and Machine Workers v. General Electric Co.*, 231 F. (2d) 259; Cert. Denied 352 U. S. 850. To hold otherwise would destroy the function of the National Labor Relations Board insofar as unfair labor practices are concerned.

Additionally, the complaint specifically alleges the commission of unfair labor practices in violation of the Labor Management Relations Act, 1947. This Court has stated that where the moving party itself alleges unfair labor practices the state court must decline jurisdiction in deference to the tribunal which Congress has selected for determining such issues in the first instance. *Weber v. Anhauser Busch, Inc.*, 348 U. S. 468, 481. Thus, petitioner has, by its pleading alone, invoked the jurisdiction of the National Labor Relations Board.

The third part of petitioner's argument deals with the right to a trial by jury. This argument we believe to be specious. It is fundamental that a party is entitled to a trial by jury of a common law tort action. But if it be found that no common law tort is stated, then there is nothing for a jury to try. Thus, the litigant cannot be said to be deprived of a jury trial when there is nothing for a jury to determine.

If the cause of action be construed to state a claim for a violation of the Labor Management Relations Act of 1947 the argument herein made with reference to the exclusive jurisdiction of the National Labor Relations Board is applicable. The Act creating the alleged wrong of unfair labor practice provided that the issue thereof should be tried by the National Labor Relations Board. The wrong being a creature of statute, the statute can provide the method of determining the factual situation without a violation of the constitutional provision for trial by jury.

CONCLUSION

For the reasons herein set forth it clearly appears the law was correctly applied to the facts of this case by the Court below and accordingly the petition for a writ of *certiorari* should be denied.

Respectfully submitted,

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COMPLAINT

Plaintiff above named, complaining of and against the above named defendant alleges:

For a First Cause of Action

1. That the plaintiff is a labor union duly organized as a corporation under and by virtue of the laws of the State of Rhode Island.

2. That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of South Carolina and having its principal place of business in West Columbia, South Carolina, where it is engaged in textile engraving.

3. That the matter in controversy herein, exclusive of interest and costs exceeds the sum of Three Thousand ($3,000.00) Dollars.

4. That for some time prior to the date hereof, the defendant employed a number of the members of the plaintiff society in various capacities at its plant at West Columbia, South Carolina and the plaintiff and the defendant entered into one or more contracts outlining and defining the methods and operations of the defendant and the terms and conditions relative to the employment of members of the plaintiff society by the defendant, reference to the same being hereby craved as often as may be necessary.

5. That the plaintiff has heretofore been duly certified by the National Labor Relations Board as the sole bargaining representative of all of the employees employed in various capacities by the defendant and the defendant has agreed to recognize the Society as the sole bargaining representative of such employees in accordance with certification by the National Labor Relations Board.

6. That since the certification by the plaintiff as the sole bargaining representative of its employees in the defendant's plant as aforesaid, the defendant, its agents and officers, have willfully and maliciously interfered with the plaintiff's contracts and relationships with its members employed by defendant and have on numerous occasions stated to the said employees that they wanted the Union to leave the plant and that they would prefer that the employees

leave the Union, and have made numerous threats and promises to the said members in an effort to compel them to terminate their membership in the Union and to expel the plaintiff from the said plant, and have failed and refused to recognize the plaintiff as the sole bargaining representative of its employees in the defendant's plant pursuant to the said certification by the National Labor Relations Board; that the acts aforesaid were in violation of plaintiff's rights as a labor union and constitute a wrongful and unlawful interference with the plaintiff in its relations and contracts with its members, and the same constitute unfair labor practices in violation of the Labor Management Relations Act of 1947.

7. That by reason of and as a result of the aforesaid willful and malicious acts and conduct of the defendant and unlawful interference with the plaintiff in its relations to its members, the said employees became insecure in their jobs and were compelled to resign from their employment and have lost, or are about to lose, their membership in the plaintiff Society, as a result of which the plaintiff lost its recognition as the sole bargaining representative of the employees in the defendant's plant, lost numerous members and has suffered extreme humiliation and loss of prestige as a labor organization and has been deprived of membership dues and other benefits accruing from its membership and the plaintiff has been otherwise damaged, all to its damage in the sum of One Hundred Thousand ($100,000.00) Dollars, actual and punitive damages.